

**SCHEDULE 3.12
TO THE
COMPREHENSIVE INFRASTRUCTURE AGREEMENT
SERVICE LEVEL METHODOLOGY**

SERVICE LEVEL METHODOLOGY

This Schedule is Schedule 3.12 to the Comprehensive Infrastructure Agreement between the Commonwealth and Vendor (the “Agreement”). This Schedule sets forth the Service Level methodology that applies to the Service Levels against which Vendor’s performance of the Services shall be measured. Unless otherwise noted in Section I of this Schedule 3.12, Sections II and III of this Schedule, methodology and service levels, respectively, are applicable to the Towers that are subject to Per Event Penalties.

I. DEFINITIONS.

Unless otherwise expressly defined herein, the capitalized terms used herein shall have the meaning assigned to them in the Appendix 11 (SOW Definitions) to Schedule 3.3 or the Agreement.

“**Allocation Percentage**” means, for a particular Service Level, the portion of the At Risk Pool used to calculate the Performance Credit payable to VITA in the event of a Service Level Failure with respect to that Service Level. The Allocation Percentage for any single Service Level will not exceed twenty-five percent (25%). The Allocation Percentage will be applied to no more than twenty (20) Service Levels per month.

“**At Risk Amount**” means, for any month during the Term, ten percent (10%) of the monthly Fees (minus the pass through for Managed Employee costs and minus the monthly Fees for the Data Network Services and Voice and Video Telecom Services, which are subject to Per Event Penalties).

“**Per Event Penalties**” means penalties for discrete Service Level Failures for the Data Network Services and Voice and Video Telecom Services; the sum of which shall not exceed the Per Event Penalty Pool.

“**Per Event Penalty Pool**” means, for any month during the Term, ten percent (10%) of the monthly Fees associated with the Data Network Services and Voice and Video Network Services.

“**At Risk Pool**” means two hundred percent (200%).

“**Minimum Performance Level**” means the desired level of performance for each given Service Level.

“**Service Level Failure(s)**” means whenever Vendor’s actual level of performance for a particular Service Level is worse than the Minimum Performance Level for that Service Level.

II. METHODOLOGY.

A. MONITORING; REPORTS; ROOT CAUSE ANALYSIS.

1. **Monitoring.** Vendor shall implement measurement and monitoring tools and produce the metrics and reports necessary to measure its performance against the Service Levels. Upon request in connection with an audit, and at no additional charge to the Commonwealth, Vendor shall provide VITA or its designees with information and access to tools and procedures used to produce such metrics.

2. Reports. Vendor shall report to VITA Vendor's performance of the Services against each Service Level on a monthly basis beginning on the schedule identified in Section III, below, along with detailed supporting information. As part of the standard monthly Service Level reports, Vendor shall notify VITA of any (i) Service Level Failures, and (ii) Performance Credits to which the Commonwealth becomes entitled. Vendor shall provide such reports and supporting information to VITA no later than seven (7) business days after the end of the preceding month. The raw data and detailed supporting information shall be Commonwealth Confidential Information.

3. Root Cause Analysis. Vendor shall promptly investigate and correct Service Level Failures in accordance with the procedures for Root Cause Analysis set forth in the Agreement and the Statements of Work.

B. SUCCESSIVE SERVICE LEVEL FAILURES.

If a Service Level Failure with respect to a given Service Level recurs in consecutive Reporting Intervals, the amount of the applicable Performance Credit payable to VITA shall be multiplied by the following factors for subsequent Reporting Intervals: (i) Service Level Failure in two consecutive Reporting Intervals, then 1.5 times the amount of the Performance Credit as originally calculated; and (ii) Service Level Failure in three or more consecutive Reporting Intervals, then 2 times the amount of the Performance Credit as originally calculated. The Performance Credit for any given Service Level shall only be increased as described above, and such increase shall be payable for all successive consecutive Service Level Failures with respect to such Service Level. The Performance Credit increases described in this Section will only apply if the given Service Level has a non-zero Allocation Percentage assigned to it in all of the applicable Reporting Periods.

C. PERFORMANCE MEASUREMENT CREDITS.

1. Calculating Performance Credits. For each Service Level Failure, Vendor shall pay or credit to VITA a Performance Credit that will be computed by multiplying (a) the Allocation Percentage for such Service Level by (b) the At Risk Amount. For example, assume for purposes of illustration only, that Vendor fails to meet a Service Level Failure with an Allocation Percentage of 25% and that the monthly Fees equal \$10,000,000 and the At Risk Amount is 10%. The Performance Credit due to VITA for such Service Level Failure would be: $25\% * (10\% * \$10,000,000) = \$250,000$.

2. Earn Back Credits. If, during the three (3) months immediately following a Service Level Failure, Vendor's actual performance in each such month is equal to or greater than the Minimum Performance Level for such Service Level, then Vendor shall have earned a credit ("Earn Back Credit") equal to the amount of the Performance Credit payable by Vendor for the original Service Level Failure with respect to that Service Level. In no event shall Vendor's Earn Back Credit(s) exceed the amount of the Performance Credit(s).

3. Several Service Level Failures. Subject to **Section II(C)(4)**, if more than one Service Level Failure with respect to Service Levels has occurred in a single month, the sum of the corresponding Performance Credits shall be credited or paid to VITA.

4. Cap. In no event shall the aggregate amount of Performance Credits credited or paid to VITA with respect to all Service Level Failures occurring in a single month exceed the At Risk Amount or the Per Event Penalty Pool, as applicable.
5. Payment/Credit of Performance Credits. At the beginning of each Contract Quarter, Vendor shall itemize the total amount of Performance Credits it is obligated to pay or credit to VITA with respect to Service Level Failures occurring during the preceding Contract Quarter and any Earn Back Credits earned by Vendor during such preceding Contract Quarter on the invoice that contains charges for the last month of the applicable Contract Quarter. For any Contract Quarter in which Performance Credits exceed Earn Back Credits, Vendor shall, at VITA's option, either: (i) place the total amount of such Performance Credits related to a given Contract Quarter into a pool of credits for future use by the Commonwealth against invoices for future Services; or (ii) credit the total amount of such Performance Credits related to a given month on the invoice that contains charges for such month. Upon termination or expiration of the Term, Vendor shall pay to VITA the amount of any Performance Credits, minus any applicable Earn Back Credits, not so paid or credited to VITA's account or any unused portion of such Performance Credits.
6. Non-Exclusive Remedy. Vendor acknowledges and agrees that the Performance Credits shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in lieu of any other rights and remedies the Commonwealth has under the Agreement, at law or in equity.

D. CHANGES TO PERFORMANCE MEASUREMENTS.

1. Changes to Allocation Percentages. The Commonwealth may make changes to the Allocation Percentage for any Service Level by sending written notice to Vendor at least sixty (60) days prior to the date that such new percentages are to be effective. With respect to the addition of Service Levels, the Commonwealth shall modify the Allocation Percentages for the Service Levels such that the sum of the Allocation Percentages for all Service Levels does not exceed the At Risk Pool. Until the Commonwealth makes such modifications to the Allocation Percentages, the Allocation Percentage(s) for any added Service Level(s) shall be equal to the greater of (i) the unallocated portion of the At Risk Pool, evenly distributed amongst all of the added Service Levels or (ii) zero.
2. Additions. No more than once quarterly, the Commonwealth may add Service Levels by sending written notice to Vendor at least thirty (30) days prior to the date that such added Service Levels are to be effective. The Minimum Performance Levels for such additional Service Levels shall be determined (i) where there exists six (6) months of measurements (excluding the transition period) that are applicable to such Service Level, by taking the average of the measurements achieved during such period, or (ii) otherwise by mutual agreement of the Parties using industry standard measures. The Parties agree that unless mutually agreed, the Minimum Performance Level for such additional Service Level shall not be 100%.
3. Deletions. The Commonwealth may delete Service Levels by sending written notice to Vendor at least thirty (30) days prior to the date that such deletions are to be effective.

E. CONTINUOUS IMPROVEMENT.

The Parties agree that Vendor shall continuously improve the Service Levels during the Term of the Agreement in accordance with this Section. Beginning eighteen (18) months after the implementation of Service Level Credits and on each annual anniversary thereof, the Parties shall adjust the Minimum Performance Level for each Service Level so that the Improvement Adjustment for each Service Level is calculated as (The average of the six (6) highest or best monthly actual results that are above or better than the Minimum Performance Level during the preceding twelve (12) months minus the current Minimum Performance Level) multiplied by 20%. The Improvement Adjustment is then added to the current Minimum Performance Level in order to establish the new Minimum Performance Level.

III. SERVICE LEVELS.

The Service Levels and the numerical Minimum Performance Levels associated with each Service Level are set forth in the applicable Statements of Work. A summary listing of such Service Levels with their corresponding dates to begin reporting and dates for the implementation of service credits is attached hereto as Addendum 1 to Schedule 3.12.